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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ O.M.P.(I) (COMM.) 116/2017

S B HOSPITAL AND HEALTHCARE PVT . LTD. Petitioner
Through: Mr. Aman Leekha, Advocate with Ms.
Deepika Raghav, Advocate

versus

MANAGING TRUSTEE SANT PARMANAND HOSPITAL
BLIND RELIEF MISSION Respondent
Through: Mr. Karan Jain, Advocate

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **21.04.2017**

1. The petitioner has filed the present petition under Section 9 of the Arbitration & Conciliation Act, 1996 (hereinafter 'the Act'), inter alia praying that the petitioner be permitted to carry out the work of extraction of sheet piles at site situated at "Hospital Building" at plot Nos. 1,2 and 3, Park Area, Yamuna Bazar, New Delhi.

2. It is the petitioner's case that the work has been completed and sheet piles are required to be removed as an essential part of de-mobilisation. The petitioner's grievance was that the respondents were not taking a decision whether to permit extraction of sheet piles and the delay was causing loss to the petitioner.

3. The present petition was moved on 10.03.2017 and on that date, the Court had directed the respondent to take a final decision before

the next date of hearing and report the same.

4. The learned counsel appearing for the respondent now states that the respondent has taken a decision and decided not to permit the removal of sheet piles from the site. He states that the sheet piles have already been mutilated and therefore it would not be possible to extract the same without excavation, which is likely to damage the structure. He states that the sheet piles are required only for construction of the basement, which was completed over more than a year ago. He further submits that the respondent is also considering purchasing the sheet piles, subject to the price being agreed to.

5. In view of the stand of the respondent, an interim order directing removal of the sheet piles cannot be granted without first evaluating whether such removal is likely to damage the constructed structure. In the meanwhile, petitioner has already invoked the arbitration clause. Learned counsel for the respondent states that the respondent shall take the necessary steps for constitution of the arbitral tribunal.

6. In view of the above, the present petition is disposed of with liberty to the petitioner to make such claims before the arbitral tribunal as advised, including for damages on account of non-grant of permission for removal of sheet piles. Needless to mention that if any such claim is made, it would be considered in accordance with law. The disposal of the present petition also does not preclude the petitioner from filing any application for such interim relief, as may

be available including in relation to the extraction of sheet piles.

7. The petition is disposed of with the aforesaid observations.

APRIL 21, 2017
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VIBHU BAKHRU, J.